Case No: 4134/2004

[2006] EWHC 2126 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF TERTIARY ENTERPRISES LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice

Strand,

London, WC2A 2LL

24 July 2006

Before:

MR. THOMAS IVORY Q.C.

- -

Between:

DR. LANNING MAY BEZANT

Claimant

and

STEPHEN ROBERT LESLIE CORK

Defendants

- -
- -

Marianne Butler (instructed by Messrs CMS Cameron McKenna LLP) for the Defendant

Hearing date: 24 July 2006

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JUDGMENT

INTRODUCTION

1.
I have before me an application to strike out an application by Dr. Bezant under s.212 of the Insolvency Act 1986 (“the Act”) against the former liquidator of Tertiary Enterprises Limited (“the Liquidator”) on the grounds that it discloses no reasonable grounds for bringing the application, or as an abuse of process or for failing to comply with a rule, practice direction or court order under CPR 3.4(2)(a), (b) and (c), or under the inherent jurisdiction of the Court.

2.
The background to the s.212 application, and in turn the strike-out application before me, is briefly as follows.

3.

Dr. Bezant and her husband were employees of Tertiary Enterprises Limited (formerly known as Wadhurst Park Limited, ("the Company"). From about 1981, the Company carried on a farming business at Morghew Farm, Kent under licence from its parent company, Zirundium, the ultimate beneficial owner of which is a trust representing the family interests of Professor Hans Rausing.

4.
In the summer of 2002, Zirundium decided to sell the farm to an unconnected third party. The licence to the Company was terminated, its farming stocks, crops and other assets sold, and the Bezants' employment with the Company terminated.

5.
Dr. and Mr. Bezant brought claims for unfair and wrongful dismissal against the Company. Dr. Bezant also brought a sex discrimination claim. The claims for unfair and wrongful dismissal were dismissed on the grounds that their contracts of employment were tainted by illegality. Dr. Bezant's sex discrimination claim was not, however, dismissed. The Company then commenced proceedings in the High Court against the Bezants relating to the illegality of their contracts of employment (apparently related to payments in kind allegedly not declared to the Inland Revenue).

6.
In August 2002, the Company went into voluntary liquidation, and Mr. Stephen Cork, an experienced licensed insolvency practitioner and head of corporate recovery at Smith & Williamson Limited, was appointed liquidator.

7.
The basis of Dr. Bezant's proof in the liquidation was her sex discrimination claim. For commercial reasons, the Liquidator decided to admit Dr. Bezant's sex discrimination claim in full and she received a cheque for £13,474.88 on her claim admitted for £161,895.95. The Liquidator also discontinued the High Court proceedings which had been commenced by the Company against the Bezants, as a result of which they were awarded an amount in costs which was the basis of Mr. Bezant's proof in the liquidation. He received a cheque for £372.07 on his claim admitted for £6,470.30.

8.
On 23 August 2005, following a meeting of creditors and members, the liquidation was closed and the Liquidator was released from office.

9.
From the outset of the liquidation, Dr. Bezant and her husband raised numerous concerns and made serious wide-ranging allegations of wrongdoing against the Company's directors and alleged shadow directors. According to the Liquidator's evidence, he investigated those allegations with the assistance of his staff at Smith & Williamson, and in particular a Mr. Manson who is an experienced senior manager. The matters which he investigated included whether there were sustainable claims against the directors or others such as alleged shadow directors for fraudulent trading under s.213 of the Act, wrongful trading under s.214, sale of assets at an under-value under s.238, preferential payments under s.239 and misfeasance claims under s.2l2 as well as the possibility of other offences and claims. He came to the conclusion that there were no sustainable complaints or claims under any of those headings. When preparing his statutory report to the Department of Trade and Industry, he instructed Counsel of suitable standing and experience, who reviewed his conclusions and endorsed them. Mr. Cork states: "It is my professional opinion that there is no prospect of increasing the assets of the Company by pursuing claims against any person, and that it would not be in the interests of the

creditors to expend further resources on claims which would be speculative and, in my professional judgment, likely to fail."

10.
The Liquidator wrote a detailed letter to Dr. and Mr. Bezant on 26 October 2003 explaining why he had come to the views that he did. They were not satisfied with his conclusions but neither of them applied for relief to the Court in respect of the matters complained by either of them, as they could have done under s.168(5) of the Act. Dr. Bezant did make a formal complaint to the Insolvency Practitioners' Association in December 2002. They considered the complaint and concluded there was no case to answer. In informing the Liquidator of their conclusion, they noted that the Liquidator had shown "considerable restraint when dealing with the persistent accusations of the complainants and this should be commended".

11.
On 24 June 2004, the Bezants applied to Registrar Jaques under ss.1l2 and 115 of the Act for an order that the Company's books and records be disclosed to them. In a detailed judgment given on 30 September 2005, Registrar Jaques refused that application, in the course of which he stated:

> "Clearly what the Bezants have in mind are proceedings for fraudulent or wrongful trading, proceedings alleging misfeasance and proceedings to undo preferences and sales at an undervalue. As Mr. Cork says in his witness statement dated 17 September 2004, he has considered all these possibilities and has come to the conclusion that there were no sustainable complaints or claims under any of these headings. He also says that he has taken the advice of Counsel of suitable standing and experience, who has endorsed his conclusions.
>
> I can see no useful purpose in laboriously going through their many complaints in this judgment, the substance of which can be seen from a perusal of the documentation before me. With respect to them all, all the Bezants have, at the end of the day, are suspicions and concerns of wrongdoing and what they are trying to do is embark on an extensive fishing expedition in the hope that they will find evidence to support those suspicions and concerns, which is something the Courts have said time and again is not permissible."

12.
By an ordinary application dated 1 August 2005, Dr. Bezant applied for an order pursuant to s.212 of the Act that the Court examine into the conduct of the Liquidator and compel him to contribute to the Company's assets by way of compensation in respect of misfeasance or breach of fiduciary or other duty. Following a short hearing on 7 October 2005, Registrar Derrett summarily struck out parts of the s.212 application and ordered Dr. Bezant to file and serve a Particulars of Claim particularising each allegation in the s.2l2 application and evidence in support. The Liquidator was given permission to file an application to strike out the s.2l2 application in response. At the hearing, Registrar Derrett specifically warned Dr. Bezant of the seriousness of the allegations she was making and the potentially serious cost consequences to her if she were unable to make them good.

13.
On 4 November 2005, Dr. Bezant served documents, including a document described as "Particulars of Claim". The Liquidator's solicitors wrote to Dr. Bezant on 25 November 2005 identifying the numerous respects in which she had not complied with the order of Registrar Derrett. As a result, the order was varied by consent on 14 December 2005 to permit Dr. Bezant to withdraw those documents

and to file and serve amended Particulars of Claim and evidence in support. The amended Particulars of Claim and evidence in support were served under cover of a letter dated 30 December 2005. The Liquidator and his advisers regarded the amended pleading and evidence as still unacceptable and applied to strike out the claim. The documentation in support of the strike-out application was served by post on Dr. Bezant on 20 February 2006 (although by some oversight the application notice itself was not sealed until 27 April 2006). Dr. Bezant's response to the strike-out application was received by the former Liquidator on 16 March 2006.

14.
The Liquidator's solicitors then set about fixing a hearing date for the strike-out application. They sought Dr. Bezant's co-operation in that regard but that was not forthcoming. In a letter dated 3 April 2006, she stated she would "be unavailable until September 2006" without offering any explanation as to why she would be unavailable for the next five months. The Liquidator's solicitors eventually took out an application to fix a hearing date, and it was fixed for a three day window commencing 24 July. Dr. Bezant did not attend the listing hearing and, when informed of the outcome, wrote to the Liquidator's solicitors complaining and asking them to re-list it, again stating she would

be unavailable until September 2006. In a subsequent letter dated 17 May 2006, she stated that the reason why she could not make any date earlier than September 2006 was "I am responsible for the care of my 93 year old mother and this presents very great difficulties for me in terms of time available for attending hearings in London". She did not explain why her responsibility for the care of her elderly mother prevented her from coming up to London on any day prior to September 2006, but not thereafter. Moreover, she has in fact attended at least two hearings (on 8 May 2006 and 26 June 2006). Dr. Bezant's apparent reluctance to have the strike-out application heard may not be unconnected with something else which has come to light.

15.
Dr. Bezant's ability to bring the s.2l2 application depends upon her being a creditor of the Company, the only persons entitled to bring such an application being "the Official Receiver or the liquidator or ... any creditor or contributory" (s.2 12(3)). Dr. Bezant had, of course, clearly been a creditor of the Company, but the Liquidator's solicitors wondered whether she remained a creditor. They wrote no less than six letters in February and March 2006 asking Dr. Bezant whether or not she remained a creditor. She prevaricated but eventually asserted in her letter of 3 April 2006 that "As to your question in regard to my status as a creditor of the Company, my answer is; yes, I am". In fact, it now appears that was not true.

16.
On 5 July 2006, the Liquidator's solicitors were given accidental notice by Professor Rausing's solicitors that in January 2006 Dr. Bezant was party to a Compromise Agreement with Professor Rausing which settled her sex discrimination claim. If true, this would mean that Dr. Bezant was no longer a creditor of the Company. The Liquidator's solicitors promptly wrote to Dr. Bezant asking for a copy of the Compromise Agreement. Having received no response to that letter, they wrote to her again on 11 July, informing her that they proposed to make a disclosure application in respect of the Compromise Agreement. That application seeking specific disclosure of the document from Dr. Bezant and third party disclosure from Professor Rausing was issued on 13 July 2006 and heard by Mr. Justice Lindsay on 18 July 2006 when Dr. Bezant did not attend. Lindsay J. made an order for disclosure and a copy of the Compromise Agreement was duly obtained from Professor Rausing.

17.

The parties to the Compromise Agreement were Professor Rausing and Ms. Rausing, Zirundium and Dr. Bezant. The Introduction refers to Dr. Bezant having obtained judgment in the sex discrimination claim in the sum of £159,120.07 with interest. Clause 4 provides for the sum of £186,523.40 to be paid to Dr. Bezant in full and final settlement of all claims against Professor Rausing and others including the Company, and contains explicit confirmation and agreement from Dr. Bezant that she is no longer a creditor of the Company.

18.
It is also clear from the Compromise Agreement (and in particular Schedule 2) that Dr. Bezant received independent legal advice in relation to the Agreement.

19.
I understand that Professor Rausing's solicitors have confirmed that the settlement sum has indeed been paid to Dr. Bezant (apart from a certain amount paid into escrow awaiting clearance of the tax position from HMRC as provided for in clause 5.2 of the Compromise Agreement).

20.
It is perfectly clear from the above that Dr. Bezant's sex discrimination claim has indeed been settled and paid in full, and that she is no longer a creditor of the Company.

21.
I should add that after the Liquidator's solicitors had served the application notice for disclosure of the Compromise Agreement on Dr. Bezant, they received a letter from Mr. Bezant enclosing an application notice seeking an order under CPR 19.4(1) and 1 9.4(2)(b) that he be substituted for Dr. Bezant in these proceedings. The Application Notice further sought the vacation of the hearing date for the disclosure application (the covering letter said it was now irrelevant because of the order for substitution he was seeking), and that the hearing of this strike-out application be adjourned "to a date when I shall be available to attend".

22.
This application notice from Mr. Bezant appears to have been prompted by the Liquidator's forthcoming application for disclosure of the Compromise Agreement which would reveal the truth about Dr. Bezant's position, that she had indeed been paid in full and was no longer a creditor of the Company.

23.
I have no doubt that Dr. Bezant and Mr. Bezant were well aware of the likely, if not inevitable, consequence of the true position being revealed, namely that Dr. Bezant's claim under s.212 would be liable to be struck out on the simple ground that she is no longer a creditor and has no basis for bringing any claim under s.2 12 whatsoever.

24.
Mr. Bezant's application notice appears to be a cynical attempt: first, to avoid the likely, if not inevitable, consequence of the true position being revealed (without actually revealing the true position) by seeking an order that he be substituted for Dr. Bezant as the Applicant; secondly to avoid the true position being revealed (by seeking the vacation of the hearing date for the disclosure application); and thirdly a manipulative attempt to put the strike-out hearing back yet further.

25.

Miss Butler, on behalf of the Liquidator, submits that Mr. Bezant's proposed application to be substituted for Dr. Bezant is misconceived and bound to fail. Under CPR 19.2(4), a new party may be substituted for an existing party if-

> "(a)
> the existing party's interest or liability has passed to the new party; and
>
> (b)
> it is desirable to substitute the new party so that the Court can resolve the matters in dispute in the
>
> proceedings."

26.
Ms. Butler says that neither of those conditions is satisfied here. She says that Dr. Bezant's interest has not "passed" to Mr. Bezant. He does have an interest (albeit small), being a creditor for some £6,000, which would have entitled him to bring the s.2l2 proceedings from the outset in his own name. But he did not acquire that interest from Dr. Bezant. Her interest has not "passed" to him; rather it has been extinguished.

27.
Ms. Butler also says that the second requirement could not be satisfied either, having regard not only to the history of this matter described above, but also the fact that Mr. Bezant has already commenced proceedings in the High Court against a number of parties including the Liquidator (which are also subject to a strike-out application). The claim in those proceedings against the Liquidator is not an application under s.2 12 of the Act but rather a claim at common law in the tort of negligence, but it concerns the same subject matter. Rather than substituting himself for Dr. Bezant in the s.2l2 application, Ms. Butler says Mr. Bezant should be seeking to amend the proceedings that he has already brought against the Liquidator and others. The effect of substituting himself for Dr. Bezant would be that he would be pursuing 2 sets of proceedings against the Liquidator concerning the same subject matter, which would be an abuse of process.

28.
Both those submissions seem to me to be well-founded, and that Mr. Bezant's proposed application for substitution would be bound to fail.

29.
However, as that may be, Mr. Bezant's application is not before me. Moreover, although Dr. Bezant has claimed in correspondence with the Liquidator's solicitors that she is not available to attend any hearing prior to September, there has been no application by her to the Court to adjourn this hearing. Even if there had been an application before me (by either of them) to adjourn this hearing, I would not have been prepared to grant it without more information to satisfy me that they genuinely cannot be available on any date before September, in the case of Dr. Bezant, and date unknown in the case of Mr. Bezant. I therefore proceeded to hear the strike-out application in Dr. Bezant's absence.

PRIMARY GROUND OF STRIKE-OUT APPLICATION

30.
Now that the true position has been revealed, the primary ground of the strike-out application, not surprisingly, is that Dr. Bezant is no longer a creditor of the Company and therefore has no locus

standi or basis for bringing any s.2l2 application. In my judgment, that is plainly right and the s.212 application should be struck out on that basis.

31.
It is clear from the Compromise Agreement that Dr. Bezant is no longer a creditor of the Company. The Company was not, of course, a party to the agreement because it had already been dissolved and no longer existed. But in my judgment, that cannot make any difference. Under that Agreement, to which Dr. Bezant is a party, she has been paid in full and she expressly agreed and confirmed that she was no longer a creditor of the Company. Any suggestion that she is still a creditor of the Company is untenable.

32.
S.212(3) provides that "the Court may, on the application of the Official Receiver or the Liquidator or of any creditor or contributory, examine into the conduct of the person ... and compel him [to repay or restore money or to contribute sums by way of compensation]". Accordingly, Dr. Bezant's ability to make the application is dependent upon her being a creditor of the Company. In my judgment, that must mean that she is a creditor not merely at the time when she issued the application notice but when the application is actually made and dealt with by the Court. Since she is no longer a creditor, she has no locus standi or basis for making the s.212 application.

33.
I should add that this is not a mere technicality. Dr. Bezant has been paid in full and has suffered no loss. She no longer has any conceivable grounds of complaint, or any basis for bringing a s.2l2 application.

ALTERNATIVE GROUND OF STRIKE-OUT APPLICATION

34.
It was argued on behalf of the Liquidator that the s.212 application should be struck out in any event on wider grounds: one complaint had already been decided by the Registrar against Dr. Bezant; there are allegations that certain statutory offences have been committed which, on their face, could not have been committed; and generally a failure adequately to plead and particularise a sustainable case against the Liquidator. In view of my decision to strike out the application on the grounds that Dr. Bezant is no longer a creditor, it is unnecessary for me to decide the alternative grounds for the strikeout application. However, as it has been argued before me, I shall state my conclusions briefly.

35.
The "Particulars of Claim" make a whole series of allegations against the Liquidator. They are wide-ranging and include allegations of fraud and dishonesty against a large number of people: not only the directors and shadow directors but also professional advisers (solicitors and accountants) as well as the Liquidator himself.

36.
The allegations fall essentially into two categories: first, what Ms. Butler called "personal offences", where the Liquidator himself is alleged to have been guilty of a statutory breach, fraud or misrepresentation; and secondly what Ms. Butler called "failure to recover offences", where the complaint is that the Liquidator failed to "pursue" other individuals for their misfeasance, or take steps to "recover" company assets from them by making applications to the Court, or reporting their alleged misfeasance to the Secretary of State.

37.
So far as the personal offences are concerned, Dr. Bezant appears to be alleging some form of conspiracy between the Liquidator and the directors and professional advisers. She alleges, for example, that the Liquidator was in breach of duty under s.218 in failing to report to the Secretary of State the "criminal misfeasance" of officers and members of the company. The duty to report only arises if "it appears to the Liquidator" that a criminal offence has been committed, and the Liquidator's evidence is that it did not appear to him that offences had been committed. Dr. Bezant alleges that:

> "The Liquidator was effectively paid his fee in return for turning a blind eye to the misfeasance of the directors, officers and members of the company, which may in some cases constitute criminal offences. By so doing he is potentially guilty of secondary liability in the misfeasance of the principal offenders and/or conspiring to pervert the course of justice . .

Similarly, in relation to an alleged breach of s.219 of the Act (considered below), she alleges:

> "... the Court should examine the conduct of the Liquidator, whose purpose was to conceal the misfeasance of the directors and others and to protect them from potential criminal prosecution, and compel him to make such contributions to the assets of the company as it thinks proper, in view of conduct which may be regarded as a perversion of the course of justice".

These are extremely serious allegations of dishonesty against the Liquidator. They are not properly pleaded, let alone substantiated. The suggestion that the Liquidator was conspiring with the directors and others to conceal or ignore criminal offences and to pervert the course of justice is simply absurd.

38.
Dr. Bezant also alleges that Zirundium, the Company's solicitors and the company's accountants/tax advisers were guilty of a statutory offence under s.209 (falsification of company's books). The alleged false statements, as I understand it, are said to have been made with intent to deceive the Liquidator, but the Liquidator is implicated on the basis that he may have misrepresented the facts to Counsel who could only have endorsed the Liquidator's views "on the basis of an incomplete presentation or a misrepresentation of the facts". As an allegation of misrepresentation it is not properly pleaded or particularised, let alone substantiated. Again, it is a bare assertion, no more than that.

39.
Also within this category of personal offences is the allegation that the Liquidator was in breach of s. 219 of the Act in failing to provide documents and information to assist the DPP or the Secretary of State in connection with criminal proceedings instituted by either of them. Quite apart from any other objections to this allegation, as Ms. Butler points out, s.219 simply cannot apply unless the DPP or Secretary of State have instituted criminal proceedings. Since no proceedings have been instituted by the DPP or Secretary of State, the statutory duty has not been engaged, and the Liquidator cannot be in breach of it.

40.
Turning then to the second category of allegations (the failure to recover offences) which account for the majority of the allegations, as already indicated, these complaints are founded upon alleged misconduct by others: that the directors and others including professional advisers were guilty of various forms of misfeasance, and that the Liquidator failed to "pursue" them for their misconduct

and take steps to “recover” company assets from them or report their alleged misfeasance to the Secretary of State. The types of misfeasance alleged against the directors and others include misconduct under:- s.206 (fraud in anticipation of winding up); s.208 (misconduct in the course of winding up - not misconduct by the Liquidator but by others concealing matters from the Liquidator); s.210 (material omissions from statement of company’s affairs); s.211 (false representations to creditors); s.213 (fraudulent trading); s.214 (wrongful trading); s.238 (transactions at undervalue); and s.239 (preferences).

41.
Given the nature of these allegations where the primary complaint relates to the alleged misfeasance of the directors and others, one might have expected the application to have been brought against those persons, rather than against the Liquidator. (I would add that if Dr. Bezant had brought her application against the directors and others alleged to be the primary culprits, making the same substantive allegations as in the present application against the Liquidator, I have no doubt they would have had a great deal to say about whether these very serious allegations had been properly pleaded and substantiated.) But for reasons known to herself, Dr. Bezant has chosen not to do that.

42.
Instead, she has brought the application against the Liquidator for not having “pursued” the directors and other alleged wrongdoers, and failing to “recover” company assets from them or to report their alleged misconduct to the Secretary of State. In so doing she takes upon herself the task of properly pleading and substantiating not only the primary allegations of misconduct against the directors and others (as in an application against them) but also the secondary or consequential allegations of breach of duty or misfeasance against the Liquidator for failing to pursue the primary wrongdoers or take steps to recover company assets from them or report their alleged wrongdoing to the Secretary of State.

43.
There is in principle nothing to stop Dr. Bezant from taking that course (albeit more complicated and burdensome than an application against the directors and others alleged to be primary wrongdoers). But, if she does so, she must properly plead and substantiate both elements of the application: the secondary allegations against the Liquidator as well as the primary allegations against the directors or other wrongdoers. In my judgment, she has not done so.

44.
Ms. Butler, on behalf of the Liquidator, submits that Dr. Bezant has not adequately pleaded, particularised or substantiated with evidence the very serious primary allegations against the directors and others. She may well be right about that. However, for present purposes, it is sufficient for me to focus on the secondary allegations against the Liquidator of failing to pursue the alleged wrongdoers or to recover assets from them or report their alleged misfeasance to the Secretary of State, where the failure properly to plead and substantiate a case against the Liquidator is obvious. Dr. Bezant’s case against the Liquidators in this respect is conveniently summarised in the Ordinary Application (as amended) as follows:

> “In summary: the Respondent has acted in breach of his fiduciary duties to the company and its creditors by:
>
> (a)
> failing to take every possible step to get in, realise and distribute the assets of the Company to the

genuine creditors;

(b)
failing to swell the Company's assets by neglecting to pursue the directors and officers of the Company, and associated companies, in order to recover any sums properly due from them to the Company in consequence of their misfeasance;

(c)
entering into costly and commercially unjustified litigation and thereby significantly reducing the funds

available to creditors".

45.
The third of those allegations, it transpires, relates to the Liquidator's opposing the Bezants' application against him for disclosure of the Company's books and records which, as I have already indicated, was dismissed by the Registrar. The Bezants' appeal from the Registrar's decision was also dismissed (save in relation to one proof of debt which the Bezants had not seen). Given that the proceedings were brought by the Bezants against the Liquidator (not by him), and given that these proceedings were decided in his favour, this complaint seems to be completely hopeless.

46.
The other two allegations appear to postulate an absolute duty on the part of the Liquidator to take "every possible step" to collect the assets, and to bring proceedings against the misfeasant directors and others. That is clearly going far too far. As Ms. Butler rightly submits, were a Liquidator to owe a duty to take every possible step to collect in a Company's assets, he could (on Dr. Bezant's case) be liable for failing to initiate unmeritorious expensive litigation on the off chance of recovering an insignificant debt. He would also be required to bring proceedings against a misfeasant director irrespective of the merits, the difficulty in cost of bringing proceedings and the chances of financial recovery.

47.
Any decision to take proceedings against directors or others must be rooted in the Liquidator's duty to take reasonable care and skill, exercising his discretion whether or not to take proceedings, and the Court will not lightly interfere with the Liquidator in the exercise of his discretion. Insofar as Dr. Bezant's application is based on an absolute duty on the part of the Liquidator to take every possible step to recover assets and to take proceedings against directors and others, it is obviously unsustainable.

48.
It may be Dr. Bezant really wishes to advance a rather different case based on a failure to investigate properly. As Ms. Butler acknowledged, the Liquidator may well have owed the Company a duty to investigate (within the limits of the resources reasonably available to him for the purpose) the validity of the proofs of debt and whether there were any realistic prospects of increasing the assets of the Company by bringing proceedings against directors or by applying to the Court for any other purpose, and to do so exercising reasonable care and skill. Indeed, the Particulars of Claim make repeated allegations of failure on the part of the Liquidator to investigate, and repeated assertions that if he had properly investigated monies would have been recovered, which may be read as implicitly alleging that the Liquidator owed such a duty to investigate, as well as breach thereof. The Reply also refers (para. 6.5) to the requirement of the Liquidator to exercise reasonable care and skill and

(amongst other matters) obligations to investigate. If that is indeed the case which Dr. Bezant wishes to make, however, it is not the impression gained from other parts of the pleading I have already referred to, which accuse the Liquidator of conspiring with the directors and others to conceal or ignore their alleged misfeasance and to pervert the course of justice.

49.
At all events, if Dr. Bezant does wish to advance a case based on a duty to exercise reasonable care to investigate properly, it is again incumbent upon her properly to plead and substantiate the case in negligence against the Liquidator in investigating the claims, particularly bearing in mind (i) the Liquidator's evidence that he did investigate the various allegations of misfeasance made by the Bezants and concluded there was no sustainable basis for the claims and that he instructed Counsel who confirmed his conclusion and (ii) the repeated assertions in the Particulars of Claim that the allegedly misfeasant directors actually hid matters from the Liquidator. In what respects is it said that he failed to investigate properly? What exactly is it that he could and should have done by way of investigation that he failed to do, and exactly how would it have made a difference? The Particulars of Claim do not say. It is not good enough simply to say that he should have investigated properly and had he done so monies would have been recovered.

50.
In my judgment, even if Dr. Bezant did seek to advance a case based on a more limited duty to take reasonable care to investigate matters properly, there is no proper case of breach particularised, let alone substantiated and it is liable to be struck out for failing to disclose reasonable grounds for bringing the application or as an abuse of process.

51.
For the sake of completeness, I should add there is a discrete issue relating to an allegedly false entry regarding the shareholding of the Company which (as I understand it) is said to render the whole liquidation invalid. This allegation was specifically considered and rejected by the Registrar in the course of deciding the disclosure application, and any attempt to revisit that issue in the s. 212 application is either impermissible or hopeless.

52.
I should also say that Ms. Butler, for the Liquidator, raised a number of other objections to Dr. Bezant's case as pleaded, but it is unnecessary for me to deal with those in this Judgment.

53.
Had I been deciding the strike out application on the alternative ground, I would have had to consider whether Dr. Bezant should be given a further opportunity to reformulate her case. Having regard to the history of this matter, including the numerous attempts Dr. Bezant has already had to plead and substantiate her case properly, the very serious nature of the allegations, the observations of the Registrar (which apply with even more force to the wide-ranging allegations of fraud and dishonesty which Dr. Bezant has made since the hearing before the Registrar), Dr. Bezant's prevarication and dissembling over the Compromise Agreement, and the delay that has already occurred, I would not have been prepared to do so. I would have struck out the application on this alternative basis, were I not (as I am) striking it out in any event on the primary ground that Dr. Bezant is no longer a creditor of the Company.